

111TH CONGRESS
1ST SESSION

S. 1428

To amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 9, 2009

Mr. WHITEHOUSE (for himself, Mr. CARDIN, Mrs. FEINSTEIN, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Mercury Pollution Re-
5 duction Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) mercury and mercury compounds are highly
9 toxic to humans, ecosystems, and wildlife;

1 (2)(A) as many as 10 percent of women in the
2 United States of childbearing age have mercury in
3 their bloodstreams at a level that could pose risks to
4 their unborn babies; and

5 (B) hundreds of thousands of children born an-
6 nually in the United States are at risk of neuro-
7 logical problems relating to mercury exposure in
8 utero;

9 (3) the most significant source of mercury expo-
10 sure to people in the United States is ingestion of
11 mercury-contaminated fish;

12 (4) the long-term solution to mercury pollution
13 is to minimize global mercury use and releases of
14 mercury to eventually achieve reduced contamination
15 levels in the environment, rather than reducing fish
16 consumption, because uncontaminated fish represent
17 a critical and healthy source of nutrition for people
18 worldwide;

19 (5) mercury pollution is a transboundary pollut-
20 ant that—

21 (A) is deposited locally, regionally, and
22 globally; and

23 (B) affects bodies of water—

24 (i) near industrial areas, such as the
25 Great Lakes; and

1 (ii) in remote areas, such as the Arc-
2 tic Circle;

3 (6) of the approximately 30 facilities in the
4 United States that produce chlorine—

5 (A) only 5 use the obsolete “mercury cell”
6 chlor-alkali process; and

7 (B) 4 have not yet committed to phasing
8 out mercury use;

9 (7)(A) less than 5 percent of the total quantity
10 of chlorine and caustic soda produced in the United
11 States comes from the chlor-alkali plants described
12 in paragraph (6) that use the mercury cell chlor-al-
13 kali process;

14 (B) cost-effective alternatives are available and
15 in use in the remaining 95 percent of chlorine and
16 caustic soda production; and

17 (C) other countries, including Japan, have al-
18 ready banned the mercury cell chlor-alkali process;

19 (8) the chlor-alkali industry acknowledges
20 that—

21 (A) mercury can contaminate products
22 manufactured at mercury cell facilities; and

23 (B) the use of some of those products re-
24 sults in the direct and indirect release of mer-
25 cury;

1 (9) despite those quantities of mercury known
2 to have been used or to be in use, neither the chlor-
3 alkali industry nor the Environmental Protection
4 Agency is able—

5 (A) to adequately account for the disposi-
6 tion of the mercury used at those facilities; or

7 (B) to accurately estimate current mercury
8 emissions; and

9 (10) it is critically important that the United
10 States work aggressively toward the minimization of
11 supply, demand, and releases of mercury, both do-
12 mestically and internationally.

13 **SEC. 3. STATEMENT OF POLICY.**

14 It is the policy of the United States that the United
15 States should develop policies and programs that will—

16 (1) reduce mercury use and emissions within
17 the United States;

18 (2) reduce mercury releases from the reservoir
19 of mercury currently in use or circulation within the
20 United States; and

21 (3) reduce exposures to mercury, particularly
22 exposures of women of childbearing age and young
23 children.

1 **SEC. 4. USE OF MERCURY IN CHLORINE AND CAUSTIC**
2 **SODA MANUFACTURING.**

3 (a) IN GENERAL.—Title I of the Toxic Substances
4 Control Act (15 U.S.C. 2601 et seq.) is amended by in-
5 serting after section 6 the following:

6 **“SEC. 6A. USE OF MERCURY IN CHLORINE AND CAUSTIC**
7 **SODA MANUFACTURING.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) CHLOR-ALKALI FACILITY.—The term
10 ‘chlor-alkali facility’ means a facility used for the
11 manufacture of chlorine or caustic soda using a mer-
12 cury cell process.

13 “(2) HAZARDOUS WASTE; SOLID WASTE.—The
14 terms ‘hazardous waste’ and ‘solid waste’ have the
15 meanings given those terms in section 1004 of the
16 Solid Waste Disposal Act (42 U.S.C. 6903).

17 “(b) PROHIBITION; USE PRIOR TO PROHIBITION.—

18 “(1) PROHIBITION.—Effective on the date that
19 is 2 years after the date of enactment of this sec-
20 tion, the manufacture of chlorine or caustic soda
21 using a mercury cell is prohibited in the United
22 States.

23 “(2) EXPORT BAN.—Effective on the date of
24 enactment of this section, the export of any mercury,
25 mercury cell, mercury compound, or mixture con-

1 taining mercury by the owner or operator of a chlor-
2 alkali facility is prohibited.

3 “(c) REPORTING.—

4 “(1) IN GENERAL.—Not later than 2 years
5 after the date of enactment of this section, the
6 owner or operator of each chlor-alkali facility shall
7 submit to the Administrator and the State in which
8 the chlor-alkali facility is located a report that iden-
9 tifies—

10 “(A) each type and quantity of mercury-
11 containing hazardous waste and nonhazardous
12 solid waste generated by the chlor-alkali facility
13 during the preceding calendar year;

14 “(B) the mercury content of the wastes;

15 “(C) the manner in which each waste was
16 managed, including the location of each offsite
17 location to which the waste was transported for
18 subsequent handling or management;

19 “(D) the volume of mercury released, in-
20 tentionally or unintentionally, into the air or
21 water by the chlor-alkali facility, including mer-
22 cury released from emissions or vaporization;

23 “(E) the volume of mercury estimated to
24 have accumulated in pipes and plant equipment

1 of the chlor-alkali facility, including a descrip-
2 tion of—

3 “(i) the applicable volume for each
4 type of equipment; and

5 “(ii) methods of accumulation; and

6 “(F) the quantity and forms of mercury
7 found in all products produced for sale by the
8 chlor-alkali facility.

9 “(2) AVOIDANCE OF DUPLICATION.—To avoid
10 duplication, the Administrator may permit the owner
11 or operator of a facility described in paragraph (1)
12 to combine and submit the report required under
13 this subsection with any report required to be sub-
14 mitted by the owner or operator under subtitle C of
15 the Solid Waste Disposal Act (42 U.S.C. 6921 et
16 seq.).

17 “(d) INVENTORY.—

18 “(1) IN GENERAL.—For each chlor-alkali facil-
19 ity that ceases operations on or after January 1,
20 2009, not later than 1 year after the date of ces-
21 sation of operations, the Administrator, in consulta-
22 tion with the State in which the facility is located,
23 shall conduct a comprehensive mercury inventory
24 covering the life and closure of the chlor-alkali facil-
25 ity, taking into account—

1 “(A) the total quantity of mercury pur-
2 chased to start and operate the chlor-alkali fa-
3 cility;

4 “(B) the total quantity of mercury remain-
5 ing in mercury cells and other equipment at the
6 time of closure of the chlor-alkali facility;

7 “(C) the estimated quantity of mercury in
8 hazardous waste, nonhazardous solid waste, and
9 products generated at the chlor-alkali facility
10 during the operational life of the chlor-alkali fa-
11 cility; and

12 “(D) the estimated aggregate mercury re-
13 leases from the chlor-alkali facility into air and
14 other environmental media.

15 “(2) RECORDS AND INFORMATION.—In car-
16 rying out paragraph (1), the Administrator shall ob-
17 tain mercury purchase records and such other infor-
18 mation from each chlor-alkali facility as the Admin-
19 istrator determines to be necessary to determine, as
20 accurately as practicable from available information,
21 the magnitude and nature of mercury releases from
22 the chlor-alkali facility into air and other environ-
23 mental media.

24 “(3) AUTHORITIES.—This Administrator shall
25 use the authorities of section 11 and any other ap-

1 appropriate authorities of this Act to carry out this
2 subsection.”.

3 (b) CONFORMING AMENDMENTS.—

4 (1) TABLE OF CONTENTS.—The table of con-
5 tents of the Toxic Substances Control Act (15
6 U.S.C. 2601 note) is amended by inserting after the
7 item relating to section 6 the following:

“Sec. 6A. Use of mercury in chlorine and caustic soda manufacturing.”.

8 (2) ENFORCEMENT.—Section 15 of the Toxic
9 Substances Control Act (15 U.S.C. 2614) is amend-
10 ed by striking “or 6” each place it appears and in-
11 serting “, 6, or 6A”.

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